

Remarks

This amendment is responsive to the official action mailed June 11, 2007, and is accompanied by a Petition for Extension under 37 C.F.R. §1.136(a).

The claims were rejected as indefinite under 35 USC §112, second paragraph, due to the phrase in independent claim 11, "a fitting housing affixed to said wall at an operating height coupled to the supply of water at the wall". Of course it is the fitting housing that is coupled to the supply. Applicant has corrected the phrase to recite that the fitting housing is affixed to said wall at an operating height and coupled to the supply of water at the wall."

Claims 3-11 were again rejected as anticipated by US 2336402 – Kaiser, which teaches a shower arrangement with water-carrying legs and cross members. However, Kaiser's arrangement does not anticipate the invention claimed by applicant. According to the examiner, Kaiser was considered to anticipate the claims "as understood and given the broadest reasonable interpretations." These interpretations are unwarranted for reasons discussed herein. Reconsideration and allowance are requested.

Furthermore, the subject matter of certain dependent claims respecting the legs being located in a common plane has been moved to independent claim 11 and these dependent claims have been canceled. With such changes to the claims, namely correction of the alleged indefiniteness and recital of the plane limitation in the independent claim, the application is presented in better condition for appeal. No new issues are presented after final rejection because the substantive limitations now in claim 11 were already under consideration. Therefore, applicant requests that this amendment be entered of record under 37 C.F.R. §116 after the final rejection. Applicant further requests reconsideration and allowance of the claims.

Applicant's shower assembly is structured to provide two spaced water carrying pipe legs that feed water to one or more nozzles. The pipe legs as claimed

extend vertically and occupy the same plane. A cross member connects across the top of the legs.

The assembly is configured so that one of the pipe legs connects to the fitting housing that has the water controls. That pipe leg extends upward from the fitting housing, parallel to the wall as claimed. The two pipe legs can be placed on the same wall, or one on each of two walls that meet at a corner or on spaced walls, etc.

An advantage of the invention is that a shower arrangement with an overhead nozzle and/or several user-surrounding inwardly directed nozzles can be connected simply to the water supply at the fitting housing that carries the on/off--hot/cold controls, without requiring the shower room to be demolished and rebuilt, reconfigured, or plumbed with an array of pipe lengths other than the arch and legs of which one leg extends upward along the wall from the fitting housing.

The Kaiser prior art reference does not teach or suggest the invention claimed as a whole. Kaiser has a control 34 that is coupled through a pipe length 31 behind the wall. The output water from the control emerges at floor level via pipe 1, which is the supply of water at the wall in Kaiser. The floor level pipe 1 extends to a junction box 2 located under the slat floor 27. Conduits 4, 5, 6, 7 radiate from the junction box 2 under slat floor 27 and connect to the vertical pipe lengths 12, 13, 14, 15 that run upwards along the shower stall walls. Any two of the pipe lengths 12 through 15 can be said to form an arch via their overhead cross-member lengths 18, 19, 20, 21. But there is no basis to conclude that the Kaiser reference meets the invention claimed as a whole or renders the claimed invention obvious. Kaiser lacks the aspect of a pipe leg emerging from a fitting housing on the wall and extending vertically as one of two legs of an arch as claimed.

According to claim 11, the first pipe leg extends upwardly from the fitting housing parallel to a plane of the wall, and the first pipe leg is coupled directly to the fitting housing so as to carry water from the fitting housing to the shower arrangement. According to the examiner, Kaiser's control coupling 31 and junction

box 2 are considered a fitting housing. Applicant respectfully submits that one cannot properly select an arbitrary group of pipes and fixtures and deem them to be a fitting housing. But even assuming that the examiner is correct to interpret these parts as a fitting housing, first pipe leg does not couple directly thereto and extend upwardly in the plane of the wall. Nor does is the second pipe leg parallel to the first pipe leg so that both said pipe legs lie in a plane as claimed.

In the comments applying applicant's claim 11 to the Kaiser reference, the examiner considers Kaiser to disclose a first pipe leg (12, 4) extending upwardly parallel to the plane of the wall and directly connected (at 4) to the fitting housing. If the first pipe leg includes lengths 12 and 4 as stated in the official action, then the first pipe leg does not extend parallel to the plane of the wall. If the first pipe leg extends parallel to the plane of the wall, then the first pipe length can include length 12 but not length 4 and in that case does not connect directly to the fitting housing.

Similarly, regarding claim 4 (now canceled but reflected in independent claim 11), the examiner regards the two legs as 12 and 15, which lie in the same plane. However if the legs are 12, 4 and 15, 7 as they must be construed to make them connect directly to the so-called fitting housing (namely the assembly of junction box 2, pipe 1 and pipe 31), then the legs 12, 4 and 15, 7 are not parallel and in the same plane. Likewise, claim 8 states that the legs are straight, which describes sections 12, 15 but not the legs 12, 4 and 15, 7 of which one is to be connected directly to the fitting housing in accordance with the claims. One cannot regard a right angle structure (12, 4 or 15, 7) as being straight. One cannot regard the straight structures (12 or 15) as being coupled directly to the fitting housing.

It is plainly not correct in the rejection of claims to regard a term such as "leg" or "legs" as meaning one element or one selection of parts in order to conclude that the prior art meets that term at one phrase in the claims, and then to regard that same term as meaning a different selection of parts in order to conclude that the prior art meets a different phrase in the claims where that term appears. However the rejection does just that in construing the terms "leg" and "legs" where they

appear in different phrases, even in the very same claim, namely claim 11. Assuming that one construes "the fitting housing" as the arbitrary selection of box 2, pipe 1 and pipe 31, and whether one chooses to regard the legs in Kaiser as 12 and 15 or as 12, 4 and 15, 7, the prior art reference does not meet the subject matter claimed as a whole.

The point is that the Kaiser reference, like the other prior art of record, does not teach or suggest that a fully functional user-surrounding shower arrangement can be obtained advantageously in a shower room having a wall connection for a fitting housing, by providing parallel water carrying legs of which one extends vertically directly from the fitting housing for the wall connection, and is connected via an overhead arch to a parallel leg attachable to the same wall or to another nearby wall.

Applicant's independent claim 11 defines aspects that are not taught by Kaiser. The rejection under 35 U.S.C. §102 should be withdrawn. Furthermore, the prior art of record, including Kaiser and also including the previously cited Davies stand-alone shower stall (GB 166908), fails to teach or suggest applicant's claimed solution to the problem of providing a user-surrounding shower installation in a shower room with a wall connection and fitting housing, namely by affixing a nozzle-bearing arch coupled directly by one leg to the fitting housing and by another leg affixed to a shower room wall. The differences between the invention and the prior art are such that the subject matter claimed as a whole is neither known nor obvious.

Applicant has pointed out claimed distinctions over the prior art of record. Applicant has further demonstrated that the application of the prior art references to the subject matter claimed is not correct in that different elements or assemblies have been construed inconsistently to meet the same terms found at different phrases in the claims. The rejection of record is without adequate basis on the record. Reconsideration and allowance are requested.

This response does not present new issues requiring further consideration or search. The limitations presented in dependent claims already of record have been moved to independent claim 11. Also, readily apparent clarifications have been made to obviate the rejection for indefiniteness. Although applicant requests allowance, it is further requested in any event that this amendment be entered of record, to reduce and clarify the issues that may be presented in any appeal.

Respectfully submitted,

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